

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Tyler P. Wiss and Melody M. McKenna,

Case No. 22-cv-2047 (JWB/LIB)

Plaintiffs,

vs

Proctor Independent School District 704,
Derek B. Parendo, John Doe Assistant
Coaches #1-5 and John E. Engelking,

Defendants.

**DEFENDANT DEREK B.
PARENDO'S JOINDER IN MOTION
TO DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINT
PURSUANT TO FED. R. CIV. P.
12(B)(5)**

TO: THE PARTIES, ABOVE NOTED, AND THEIR COUNSEL OF RECORD:

Defendant Derek B. Parendo ("Parendo") hereby joins Defendants Proctor Independent School District 704 and John E. Engelking's Motion to Dismiss Plaintiffs' First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(5), [Docket No. 53], and moves the Court to dismiss the Amended Complaint, [Docket No. 5], because Plaintiffs failed to serve the Amended Complaint upon Defendant Parendo in accordance with the Rules of Federal Procedure.

The grounds upon which Defendants Proctor Independent School District 704 and John E. Engelking (the "School District Defendants") base their motion are equally applicable to Defendant Derek B. Parendo. Therefore, in the event that Plaintiffs' Amended Complaint is dismissed as asserted against the School District Defendants, it should also be dismissed as asserted against Defendant Parendo.

On August 19, 2022, Plaintiffs initiated this case by filing their original Complaint. (Compl., [Docket No. 1]). On September 1, 2022, Plaintiffs filed their Amended Complaint. (Am. Compl., [Docket No. 5]).

On September 7, 2022, Plaintiffs served Defendant Parendo with their original Complaint. (Certificate of Service, [Docket No. 9]). On September 28, 2022, the undersigned counsel appeared on behalf of Parendo.¹ (Notice of Appearance, [Docket No. 13]). On October 24, 2021, Parendo answered Plaintiffs' original Complaint.² (Answer, [Docket No. 20]).

Plaintiffs filed their Amended Complaint before counsel appeared on behalf of Parendo. (*See* [Docket Nos. 9, 13, 14]). Plaintiffs have not served Parendo with the Amended Complaint as required by the Federal Rules of Civil Procedure, nor have Plaintiffs served the undersigned counsel with the Amended Complaint. (Fredrickson Aff., ¶ 4). As a result, Parendo has not answered Plaintiffs' Amended Complaint.

Parendo's circumstances are analogous to those of the School District Defendants. Accordingly, Parendo hereby joins and adopts the arguments and authorities contained in the School District Defendants' Motion and filings in support thereof.

¹ Attorney Steven D. Pattee also appeared on behalf of Parendo. (Notice of Appearance, [Docket No. 14]). Mr. Pattee subsequently withdrew. (Notice of Withdrawal, [Docket No. 21]).

² The undersigned Counsel received notice of this case on the evening of September 27, 2022. (Fredrickson Aff., ¶ 3). Parendo's Answer was due the following day. Fed. R. Civ. P. 12(a)(1)(A)(i). In the haste to obtain and file stipulation extending Parendo's time to answer, the stipulation erroneously referenced Parendo's Amended Complaint. (Stipulation, [Docket No. 15]).

For the foregoing reasons, if the Court grants the School District Defendants' motion and dismisses the Amended Complaint as asserted against the School District Defendants, the Court should also dismiss the Amended Complaint as asserted against Defendant Derek B. Parendo.

**LIND, JENSEN, SULLIVAN &
PETERSON, P.A.**

Dated: April 24, 2023

By: s/Mark A. Fredrickson

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